

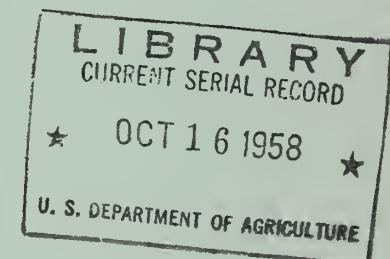
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# SUMMARY of COOPERATIVE CASES



UNITED STATES DEPARTMENT OF AGRICULTURE  
FARMER COOPERATIVE SERVICE

LEGAL SERIES NO. 6

SEPTEMBER 1958

UNITED STATES DEPARTMENT OF AGRICULTURE  
FARMER COOPERATIVE SERVICE  
WASHINGTON, D.C.

SUMMARY OF COOPERATIVE CASES

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Prepared by

RAYMOND J. MISCHLER, *Attorney*  
OFFICE OF THE GENERAL COUNSEL, U.S.D.A.

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The comments on cases reviewed herein represent the personal opinion of the author and not necessarily the official views of the Department of Agriculture.



RULING BY INTERNAL REVENUE SERVICE PERTAINING TO INFORMATION  
RETURNS REGARDING PATRONAGE DIVIDENDS

(Rev. Rul. 58-335; I.R.B. 58-26, p. 29-30)

The Internal Revenue Service in Revenue Ruling 58-335 ruled that a cooperative tax-exempt organization is not required to file an information return on Form 1099 for an individual receiving patronage dividends as well as regular dividends if the total amount of each, computed independently, is less than \$100 for such individual.

Although the ruling reflects that it arose from advice requested by a "tax-exempt" cooperative organization, it appears that the reasoning in the ruling would be equally applicable to a cooperative organization which is not regarded as "tax-exempt."

The text of the complete ruling follows:

"Advice has been requested by a tax-exempt cooperative organization regarding the requirements for filing information returns, Form 1099, where it has made patronage refunds and dividend payments in the factual situations described below.

(1) Stockholder A was credited with a patronage refund and also was paid a cash dividend on his shares of stock. Each amount was less than \$100.00, but in the aggregate exceeded \$100.

(2) Stockholder B was credited with a patronage refund of less than \$100.00, and also was paid a cash dividend on his shares of stock in excess of \$100.

Section 6044 of the Internal Revenue Code of 1954, which is substantially identical to section 148(f) of the Internal Revenue Code of 1939, relating to the required information returns to be prepared by corporations allocating patronage dividends, provides in part as follows:

'(a) PAYMENTS OF \$100 OR MORE.-- Any corporation allocating amounts as patronage dividends, rebates, or refunds (whether in cash, merchandise, capital stock, revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice, or in

some other manner that discloses to each patron the amount of such dividend, refund, or rebate) shall make a return showing - -

- (1) The name and address of each patron to whom it has made such allocations amounting to \$100 or more during the calendar year; and
- (2) The amount of such allocations to each patron.

Section 39.148(f)-(1)(a) of Regulations 118 made applicable to the Internal Revenue Code of 1954 by virtue of Treasury Decision 6091, C. B. 1954-2, 47, provides that a corporation is required to file an information return when the amounts of patronage dividends, rebates, or refunds allocated to each patron aggregate \$100 or more during the calendar year.

Section 6042 of the Internal Revenue Code of 1954 provides, in part, that every corporation shall, when required by the Commissioner of Internal Revenue, render a correct return of its payments of dividends, stating the name and address of each shareholder.

Section 39.148(a)-1(b) of Regulations 118, as amended by T. D. 6113, C. B. 1954-2, 236, also applicable herein by virtue of Treasury Decision 6091, supra, provides in part as follows:

\* \* \* In the case of a corporation described in sections 101 (10), (11), (12), or (13), or, for calendar years after 1953, in the case of a national farm loan association or a production credit association, making a payment of a dividend or a distribution to any shareholder, the information return on Forms 1096 and 1099 shall be rendered only in the case of payments amounting to \$100 or more during the calendar year. \* \* \*

The reference to patronage dividends and ordinary dividends is contained in separate sections of the Code and appear to be two distinct types of dividends, neither one of which appears to supplement the other. The words "amounts aggregating" used in section 39.148(f)-(1)(a) and the words "amounting to" used in section 39.148(a)-1(b) of Regulations 118, as amended, apply to an aggregation of like distributions of income. Thus, it follows

that patronage dividends in whatever form allocated and cash dividends paid on stock are not "like" distributions requiring an aggregation.

In view of the foregoing, it is held in situation (1) that since neither the patronage dividend nor the cash dividend, exclusive of each other, is in excess of \$100, an information return need not be filed by the corporation. In situation (2) an information return is required to be filed only to cover the payment to B of the cash dividend paid, which is in excess of \$100.

#### UNFAIR TRADE PRACTICES - COMMON SELLING AGENCY

(Virginia Excelsior Mills, Inc., v. FTC,  
F. 2d (No. 7590, Decided  
June 4, 1958))

The general problem presented by this case was set forth in Summary of Cooperative Cases, Legal Series No. 5, p. 25.

The United States Court of Appeals, Fourth Circuit, has sustained the finding of the FTC that the maintenance of a corporation as a common sales agency by producers of excelsior was unlawful under section 5 of the Federal Trade Commission Act where the primary purpose of the arrangement was the elimination of competition through price fixing. The court said that, apart from those aspects of the arrangement which restricted the production of the individual producers, the obligatory delegation of all discretion in fixing prices to the common sales agent was a violation per se of Section 1 of the Sherman Act, and, therefore, unlawful under Section 5 of the FTC Act. The opinion condemns price fixing regardless of the problems, justifications, and motives that might have prompted the practice.

The Commission's order prohibiting each producer from entering into agreements fixing prices was sustained. The court said it obviously had reference to concerted action by two or more vendors and not to such fixing of prices as occurs between a single seller and a single buyer. However, the Commission's order prohibiting the producers from operating or maintaining a

specified corporation or any other organization as a common selling agency was modified to prohibit only the utilization of a common selling agent in aid of a purpose that could not be lawfully accomplished under the order by direct agreement among the participating producers. The court noted that "in some businesses, it is common practice for several producers to utilize the services of one sales agency, and there is nothing unlawful in such an arrangement where each producer preserves, and exercises, independence in pricing, acceptance of orders, production, and other material matters."

GROSS INCOME: AMOUNTS REBATED TO MILK PURCHASERS

(Rosedale Dairy Co., Inc., T. C. Memo. 1957-242;  
CCH Dec. 22, 793(M))

During the years in issue the petitioner sold milk to some of its customers at prices below the minimum price set by the Milk Commission of Virginia pursuant to an agreement with such customers that they would pay the regulated price for milk and the petitioner would rebate to them the difference between such regulated price and the agreed-upon sale price. It included the full amount in income and claimed a deduction on its returns for the amount of the rebates as "freight and hauling" expenses. The respondent (the Commissioner of Internal Revenue) disallowed the deductions. The Tax Court held, however, that the amount of the rebates did not constitute income to the petitioner when originally received, and should not have been reported as income. It followed the case of Pittsburgh Milk Co., 26 T.C. 707 (1956)

RIGHT OF REA COOPERATIVE TO EXERCISE POWER  
OF EMINENT DOMAIN.

(McCrady v. Western Farmers Electric Cooperative,  
323 Pac. 2d 356      Oklahoma      ).

In the case cited above, the Supreme Court of Oklahoma concluded that cooperatives organized under the Rural Electric Cooperative Act of Oklahoma may not arbitrarily or unreasonably exclude the public from membership. Accordingly, it held that an attack upon the constitutionality of the exercise of the power of eminent domain by such a cooperative based upon its right to select members was without merit.

The REA cooperative sued to exercise the power of eminent domain to secure an easement over the property of the defendants for constructing an electric transmission line. The defendants challenged the sufficiency of the petition and the right of the cooperative to condemn their property for this purpose. The lower court held in favor of the cooperative and the defendants appealed. On the issue of the right of the cooperative to exercise the power of eminent domain, the court commented in part as follows:

"However, the peg upon which defendants hang their case is the unusual statutory grant of power to such cooperatives to enable them to carry out the overall purposes of the Act. Tit. 18 O.S. 1951, Section 437.2(d). The pertinent provisions of this section are:

'To generate, \* \* \* and to distribute, \* \* \* electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten percentum (10%) of the number of its members; \* \* \* '.

"Section 437.7(a), Tit. 18 O.S. 1951, is also pertinent. It provides that no person: "\* \* \* shall become a member of a cooperative unless such person shall agree to use electric energy furnished by the cooperative when such electric energy shall be available \* \* \*"; that a person shall cease to be a member if he refuses to use electricity made available by the cooperative or if the cooperative does not make

electricity available within a specified time; and that "The by-laws may prescribe additional qualifications and limitations in respect to membership." From the foregoing, defendants argue that condemnation by this plaintiff cannot meet the test of a "public use", since distribution of power is limited to plaintiff's membership. Parenthetically, it should be noted that service by the cooperative is not limited to its membership. In addition, we do not find in the Rural Electric Cooperative Act the discretionary authority in the selection of its membership which defendants contend is granted to cooperatives. We are not here concerned with those corporations organized under Section 421, Tit. 18 O.S. 1951.

"It must be borne in mind that these rural electric cooperatives are statutory non-profit corporations in which the membership is entitled to a rebate of all charges for service above certain specifically designated expenses and reserves. More persuasive of the more than private nature of the cooperatives is the specific legislative grant of other privileges and exemptions not accorded private corporations. Thus, they are exempt from excise and income taxes except for an in lieu payment of a nominal amount. Section 437.27. They are exempt from the control and jurisdiction of the Corporation Commission, Section 437.26. The members and officers are not individually responsible for any debt of the cooperative. Section 437.21. And, as we all know, the economic existence of these cooperatives was solely dependent upon public funds loaned by the Federal Government to further the same objectives prompting the adoption by our Legislature of this Act. These considerations cannot be ignored in construing the provisions of the statute regarding membership. We are persuaded that the statutory qualifications concerning membership were meant to obviate the possibility of controversy over the ability of the cooperative to furnish electricity within the limit of its available resources, and to insure the economically sound operation at minimum cost of an otherwise essentially public power medium at the local level, dependent upon

the loan of public funds for its existence to perform its public purpose within an area where a need exists. We do not construe the provision authorizing the cooperative by-laws to establish additional qualifications for membership to mean that any cooperative may unreasonably or arbitrarily exclude any citizen within the territory served by its distribution system. And, although there is some authority to the contrary, the better reasoned opinions from other jurisdictions in which this question has been presented are in accord with our conclusion. Bookhart v. Central Electric Power Cooperative, 219 S.C. 414, 65 S.E. 2d 781; Capital Electric Power Association v. McGuffee, Miss., 83 So. 2d 837; Dairyland Power Cooperative v. Brennan, 248 Minn. 556, 82 N.W. 2d 56.

"The construction of these statutes in the manner of the premise, upon which defendants' argument is based, might render them impotent for the accomplishment of the expressed legislative purpose. Although we assume that individual cooperatives would not undemocratically exclude members of the public from membership, a construction of these statutes which would make this legally possible could effectively thwart rural electrification. We will not ascribe that intent to the Legislature where the conclusion is not inescapable. The Legislature has granted this power. Certainly the Legislature must be presumed to intend that all its enactments be constitutional.

"As we have reached the conclusion that cooperatives organized under the Rural Electric Cooperative Act may not arbitrarily or unreasonably exclude the public from membership the attack upon the constitutionality of the exercise of the power of eminent domain by them is without further merit. Condemnation by them is as much for public use as is a condemnation for turnpikes, airports, public housing, industrial port facilities, parking lots, public hunting grounds, and agrarian reform, all of which involve reasonable restrictions on use and all of which have received judicial approval from various courts. But our conclusion likewise obviates any necessity for an examination by us of the proper definition of the term "public use."

Under even the more restricted definition and understanding of that phrase, this situation qualifies as one in which the power is properly exercised. Tuttle v. Jefferson Power & Improvement Co., supra; Bilby v. District Court, etc., 159 Okl. 268, 15 P.2d 38; Delfield v. City of Tulsa, 191 Okl. 541, 131 P. 2d 754, 143 A. L. R. 1032."

MASTER AND SERVANT or INDEPENDENT CONTRACTOR -ACCIDENT CASE

(Phillips Coop Gin Co. v. Toll, 311 S. W. 2d 171.)

In an action arising out of a collision between an automobile and a truck-trailer which was returning from delivery of cotton seed for defendant gin, the lower court entered judgment against the defendant and it appealed. The Supreme Court of Arkansas held that the lower court did not err in refusing to grant a directed verdict for the defendant gin. It held that the lower court did err, however, in instructing the jury that, in determining whether the truck driver was defendant's employee, it should consider in whose business he was engaged and who had the right of control and that, if the jury found that he was engaged in defendant's business and defendant had the right to control and direct his conduct, the truck driver was defendant's employee regardless of whether he was selected or paid by defendant.

The Phillips Cooperative Gin Company, defendant in the case, had accumulated a quantity of cotton seed which it sold from time to time to various oil mills. On September 27, 1955, W. T. Jackson carried a load of cotton seed by truck-trailer from the gin to the Southern Cotton Oil Mill in North Little Rock. On his return trip there occurred the traffic mishap which resulted in the death of Mr. Richard F. Toll, Sr. His administratrix brought suit claiming that the relationship between the gin and Jackson was that of master and servant. The gin company claimed that Jackson was an independent contractor. The only question considered by the appellate court was the relationship between the gin and Jackson at the time of the mishap.

The court pointed out that when it is shown that the person causing the injury was at the time rendering a service for the defendant and being paid for that service, and the facts presented are as consistent with the master-servant relationship as with the independent contractor relationship, then the burden is on the one asserting the independence of the contractor to show the true relationship of the parties. It then proceeded to cite some of the salient facts relied on by the appellees to make a jury question on the issue of master-servant as opposed to independent contractor. These were as follows:

1. The gin sold a load of cotton seed to the Southern Cotton Oil Mill and arranged with W. T. Jackson to transport the load of seed. On his way back Jackson had the traffic mishap here involved. The contract between the gin and Jackson was entirely oral.
2. Jackson loaded the seed onto the truck-trailer at the gin as directed, but the load was not weighed until it reached the Southern Cotton Oil Mill.
3. There is no evidence in the record that anyone except Jackson ever transported seed of the gin to any destination in the times here involved.
4. The gin claimed that the purchaser of the seed was to pay Jackson for transporting the seed. Jackson was to receive \$4.20 per ton. However, the particular load here involved was on September 27, 1955, and the records show that as late as October 5, 1955, the Southern Cotton Oil Mill addressed an inquiry to C. H. Martin (manager of the gin) listing this load of seed by invoice number, pounds, rate for hauling, and gross amount, and showed the hauling item as \$65.66; and the Southern Cotton Oil Mill asked Martin in an inquiry of October 5th: "This freight has not been paid to anyone. Advise how you want it handled." Along with the load of September 27th there was a load of September 26th, on which the hauling amounted to \$71.74, so the total of these two loads was \$137.40. As above stated, the September 27th load was the one which Jackson had just hauled when he was returning and had the traffic mishap here involved. The check of the Southern Cotton Oil Mill for \$137.40 for

handling was made out to C. H. Martin, dated October 5, 1955, and bore the notation: "W. T. Jackson Trucking." The check was endorsed by C. H. Martin and the Phillips Cooperative Gin Company, so it never went through the possession of W. T. Jackson.

5. In explanation as to the inquiry made by the oil mill and as to why the check was made as it was, the appellant's witnesses explained that the gin had the custom of advancing money to Jackson and being repaid by collecting the amounts due Jackson from the various oil mills to which he had hauled seed from the gin.

6. C. J. Jackson, father of W. T. Jackson (the man here involved) is the president of the Board of Directors of the gin. C. J. Jackson testified that he had no interest whatever in either the truck or trailer used by W. T. Jackson; but it was nevertheless established that the trailer was registered and licensed in the name of C. J. Jackson.

7. W. T. Jackson testified that he did hauling "for the public"; that on September 26, C. H. Martin, general manager of the gin, told him to take a load of seed to the Southern Cotton Oil Mill in North Little Rock; that Jackson loaded the seed on the truck-trailer that night; that he began the trip to North Little Rock "about daylight on September 27th"; that he delivered the load of cotton seed to the Southern Cotton Oil Mill; and "the Southern Cotton Oil Mill paid me for the hauling. The checks were made out to me." The photostatic copy of the checks in the record, however, shows that the checks were made out to C. H. Martin and that he endorsed the checks and passed them through the account of the gin, as stated in paragraph 4, supra.

8. The gin admitted that there was no written contract with Jackson, but examination showed that unless Jackson conformed to the gin's oral instructions he would not be permitted to haul any more seed for the gin.

The court concluded that the foregoing facts made a case from which reasonable men might draw the inference that Jackson was in fact the servant of the gin rather than an independent contractor. Accordingly, no error was found in the refusal of the trial court to grant an instructed verdict for the defendant gin.

The court then proceeded to consider an instruction (No.5) requested by the plaintiff and allowed by the lower court. It concluded that this instruction added "confusion rather than enlightenment" and, being a binding instruction, it should have incorporated "all of the essential conditions in the case." This, the court said, the instruction failed to do because it omitted the element of who had the right to terminate the arrangement. It further found that the instruction was "argumentative" and "a comment on the weight of the evidence!"; so it was defective on these grounds also. On the basis of this error, the judgment was reversed and the case remanded.

#### TRADE-NAMES AND UNFAIR COMPETITION

(S. C. Johnson & Son, Inc., v. Consumers Cooperative Association,  
255 F. 2d 942)

Consumers Cooperative Association of Kansas City, Missouri, sought to register the trade-name "Glo-Candle" for wax in bulk sold for molding candles. The right of the cooperative to make the registration was challenged by the Johnson Company on the ground that the name would create deception and confusion and thus unfairly compete with its registered name of "Glo-Coat" used for paint enamels and liquid polishes for finishing and coating floors and other surfaces.

The United States Court of Customs and Patent Appeals in the decision cited above held in favor of the right of the cooperative to register the name in question. The Court said that Johnson Company's use of "Glo-Coat" as a self-polishing liquid floor wax had not been such as to make it likely that purchasers and prospective purchasers of "Glo-Candle", a wax for molding candles, would be deceived or confused into thinking that the source of the candle wax was the same as that of the floor wax.

